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Report of the International Law Commission on the work of its fifty-eighth session

Report of the Sixth Committee

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I. Introduction

1. The item entitled "Report of the International Law Commission on the work of its fifty-eighth session" was included in the provisional agenda of the sixty-first session of the General Assembly pursuant to Assembly resolution 60/22 of 23 November 2005.

2. At its 2nd plenary meeting, on 13 September 2006, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 9th to 19th and 21st meetings, on 23, from 25 to 27, and on 30 and 31 October and 1, 3 and 9 November 2006. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records (A/C.6/61/SR.9-19 and 21).

4. For its consideration of the item, the Committee had before it the report of the International Law Commission on the work of its fifty-eighth session.[1]

5. The Chairman of the International Law Commission at its fifty-eighth session introduced the report of the Commission: chapters I to V and XIII at the 9th meeting, on 23 October; chapters VI and VII at the 13th meeting, on 27 October; chapters VIII and IX at the 17th meeting, on 31 October; and chapters X, XI and XII at the 18th meeting, on 1 November (see A/C.6/61/SR.9, 13, 17 and 18).

[1] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10).

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II. Consideration of proposals

A. Draft resolution A/C.6/61/L.14

6. At the 21st meeting, on 9 November, the representative of Romania, on behalf of the Bureau, introduced a draft resolution entitled "Report of the International Law Commission on the work of its fifty-eighth session" (A/C.6/61/L.14).

7. At the same meeting the Committee adopted draft resolution A/C.6/61/L.14 without a vote (see para. 13, draft resolution I).

8. Before the adoption of the draft resolution, the representative of Germany made a statement in explanation of position (see A/C.6/61/SR.21).

B. Draft resolution A/C.6/61/L.15

9. At the 21st meeting, on 9 November, the representative of Romania, on behalf of the Bureau, introduced a draft resolution entitled "Diplomatic protection" (A/C.6/61/L.15).

10. At the same meeting, the Committee adopted draft resolution A/C.6/61/L.15 without a vote (see para. 13, draft resolution II).

C. Draft resolution A/C.6/61/L.16

11. At the 21st meeting, on 9 November, the representative of Romania, on behalf of the Bureau, introduced a draft resolution entitled "Allocation of loss in the case of transboundary harm arising out of hazardous activities" (A/C.6/61/L.16).

12. At the same meeting, the Committee adopted draft resolution A/C.6/61/L.16 without a vote (see para. 13, draft resolution III).

III. Recommendations of the Sixth Committee

13. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

Draft resolution I
Report of the International Law Commission on the work of its fifty-eighth session

The General Assembly,

Having considered the report of the International Law Commission on the work of its fifty-eighth session,[1]

Emphasizing the importance of furthering the codification and progressive development of international law as a means of implementing the purposes and principles set forth in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[2]

Recognizing the desirability of referring legal and drafting questions to the Sixth Committee, including topics that might be submitted to the International Law Commission for closer examination, and of enabling the Sixth Committee and the Commission to enhance further their contribution to the progressive development of international law and its codification,

Recalling the need to keep under review those topics of international law which, given their new or renewed interest for the international community, may be suitable for the progressive development and codification of international law and therefore may be included in the future programme of work of the International Law Commission,

Welcoming the holding of the International Law Seminar, and noting with appreciation the voluntary contributions made to the United Nations Trust Fund for the International Law Seminar,

Stressing the usefulness of focusing and structuring the debate on the report of the International Law Commission in the Sixth Committee in such a manner that conditions are provided for concentrated attention to each of the main topics dealt with in the report and for discussions on specific topics,

Wishing to enhance further, in the context of the revitalization of the debate on the report of the International Law Commission, the interaction between the Sixth Committee as a body of governmental representatives and the Commission as a body of independent legal experts, with a view to improving the dialogue between the two bodies,

Welcoming initiatives to hold interactive debates, panel discussions and question time in the Sixth Committee, as envisaged in resolution 58/316 of 1 July 2004 on further measures for the revitalization of the work of the General Assembly,

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[1] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10).

[2] Resolution 2625 (XXV), annex.

1. *Takes note* of the report of the International Law Commission on the work of its fifty-eighth session,[1] and recommends that the Commission continue its work on the topics in its current programme, taking into account the comments and observations of Governments, whether submitted in writing or expressed orally in debates in the General Assembly;

2. *Expresses its appreciation* to the International Law Commission for the work accomplished at its fifty-eighth session, in particular for the following accomplishments:

(a) The completion of the second reading of the draft articles on diplomatic protection;

(b) The completion of the second reading of the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities under the topic "International liability for injurious consequences arising out of acts not prohibited by international law (International liability in case of loss for transboundary harm arising out of hazardous activities)";

(c) The completion of the first reading of the draft articles on the law of transboundary aquifers under the topic "Shared natural resources";

(d) The completion of the work on "Unilateral acts of States" by the adoption of the Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations;

(e) The completion by its Study Group of the report and the conclusions on the topic "Fragmentation of international law: difficulties arising from diversification and expansion of international law";

3. *Takes note* of the Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations under the topic "Unilateral acts of States", contained in paragraph 176 of the report of the International Law Commission[1] and commends their dissemination;

4. *Also takes note* of the forty-two conclusions of the Commission's Study Group on the topic "Fragmentation of international law: difficulties arising from diversification and expansion of international law", contained in paragraph 251 of the report of the International Law Commission, together with the analytical study[3] on which they were based;

5. *Draws the attention* of Governments to the importance for the International Law Commission of having their views on the various aspects involved in the topics on the agenda of the Commission identified in chapter III of its report, including in particular on the draft articles and commentaries on the law of transboundary aquifers;[4]

6. *Invites* Governments to provide to the International Law Commission, as requested in chapter III of its report,[5] information on legislation and practice regarding the topic "The obligation to extradite or prosecute (*aut dedere aut judicare*)";

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[3] A/CN.4/L.682 and Corr.1 and Add.1.

[4] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10), paras. 75 and 76.

[5] Ibid., paras. 26-33.

7. *Takes note* of the decision of the International Law Commission to include five topics[6] in its long-term programme of work;

8. *Invites* the International Law Commission to continue taking measures to enhance its efficiency and productivity and to consider making proposals to that end;

9. *Encourages* the International Law Commission to continue taking cost-saving measures at its future sessions without prejudice to the efficiency of its work;

10. *Takes note* of paragraph 270 of the report of the International Law Commission, and decides that the next session of the Commission shall be held at the United Nations Office at Geneva from 7 May to 8 June and from 9 July to 10 August 2007;

11. *Welcomes* the enhanced dialogue between the International Law Commission and the Sixth Committee at the sixty-first session of the General Assembly, stresses the desirability of further enhancing the dialogue between the two bodies, and in this context encourages, inter alia, the continued practice of informal consultations in the form of discussions between the members of the Sixth Committee and the members of the Commission attending the sixty-second session of the Assembly;

12. *Encourages* delegations, during the debate on the report of the International Law Commission, to adhere as far as possible to the structured work programme agreed to by the Sixth Committee and to consider presenting concise and focused statements;

13. *Encourages* Member States to consider being represented at the level of legal adviser during the first week in which the report of the International Law Commission is discussed in the Sixth Committee (International Law Week) to enable high-level discussions on issues of international law;

14. *Requests* the International Law Commission to continue to pay special attention to indicating in its annual report, for each topic, any specific issues on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest in providing effective guidance for the Commission in its further work;

15. *Takes note* of paragraphs 271 to 274 of the report of the International Law Commission with regard to cooperation with other bodies, and encourages the Commission to continue the implementation of article 16, paragraph (*e*), and article 26, paragraphs 1 and 2, of its statute in order to further strengthen cooperation between the Commission and other bodies concerned with international law, having in mind the usefulness of such cooperation;

16. *Notes* that the International Law Commission, in accordance with article 25, paragraph 1, of its statute, envisages a meeting during its fifty-ninth session with United Nations experts in the field of human rights, including representatives from human rights treaty bodies, in order to hold a discussion on issues relating to human rights treaties;

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[6] Immunity of State officials from foreign criminal jurisdiction; Jurisdictional immunity of international organizations; Protection of persons in the event of disasters; Protection of personal data in the transborder flow of information; and Extraterritorial jurisdiction.

17. *Also notes* that consulting with national organizations and individual experts concerned with international law may assist Governments in considering whether to make comments and observations on drafts submitted by the International Law Commission and in formulating their comments and observations;

18. *Reaffirms* its previous decisions concerning the indispensable role of the Codification Division of the Office of Legal Affairs of the Secretariat in providing assistance to the International Law Commission;

19. *Approves* the conclusions reached by the International Law Commission in paragraphs 262 to 267 of its report, and reaffirms its previous decisions concerning the documentation and summary records of the Commission;[7]

20. *Notes with appreciation* the expansion of the website of the International Law Commission[8] to include all its documentation, and welcomes the continuous efforts of the Codification Division to maintain and improve the website;

21. *Expresses the hope* that the International Law Seminar will continue to be held in connection with the sessions of the International Law Commission and that an increasing number of participants, in particular from developing countries, will be given the opportunity to attend the Seminar, and appeals to States to continue to make urgently needed voluntary contributions to the United Nations Trust Fund for the International Law Seminar;

22. *Requests* the Secretary-General to provide the International Law Seminar with adequate services, including interpretation, as required, and encourages him to continue considering ways to improve the structure and content of the Seminar;

23. *Also requests* the Secretary-General to forward to the International Law Commission, for its attention, the records of the debate on the report of the Commission at the sixty-first session of the General Assembly, together with such written statements as delegations may circulate in conjunction with their oral statements, and to prepare and distribute a topical summary of the debate, following established practice;

24. *Requests* the Secretariat to circulate to States, as soon as possible after the conclusion of the session of the International Law Commission, chapter II of its report containing a summary of the work of that session, chapter III containing the specific issues on which the views of Governments would be of particular interest to the Commission and the draft articles adopted on either first or second reading by the Commission;

25. *Recommends* that the debate on the report of the International Law Commission at the sixty-second session of the General Assembly commence on 29 October 2007.

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[7] See resolutions 32/151, para. 10, and 37/111, para. 5, and all subsequent resolutions on the annual reports of the International Law Commission to the General Assembly.

[8] www.un.org/law/ilc.

Draft resolution II
Diplomatic protection

The General Assembly,

Having considered chapter IV of the report of the International Law Commission on the work of its fifty-eighth session,[1] which contains the draft articles on diplomatic protection,[2]

Noting that the Commission decided to recommend to the General Assembly the elaboration of a convention on the basis of the draft articles on diplomatic protection,[3]

Emphasizing the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (*a*), of the Charter of the United Nations,

Noting that the subject of diplomatic protection is of major importance in the relations of States,

Taking into account views and comments expressed in the Sixth Committee on chapter IV on diplomatic protection of the report of the Commission,[4]

1. *Expresses its appreciation* to the International Law Commission for its continuing contribution to the codification and progressive development of international law;

2. *Takes note* of the draft articles on diplomatic protection, presented by the Commission,[2] and invites Governments to submit comments concerning the recommendation by the Commission to elaborate a convention on the basis of these articles;[3]

3. *Decides* to include in the provisional agenda of its sixty-second session an item entitled "Diplomatic protection".

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[1] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10* (A/61/10).
[2] Ibid., para. 49.
[3] Ibid., para. 46.
[4] Ibid., para. 50.

Draft resolution III
Allocation of loss in the case of transboundary harm arising out of hazardous activities

The General Assembly,

Recalling that the International Law Commission at its fifty-third session[1] completed the draft articles on prevention of transboundary harm from hazardous activities and recommended to the General Assembly the elaboration of a convention on the basis of the draft articles,

Recalling also its resolution 56/82 of 12 December 2001,

Having considered chapter V of the report of the Commission on the work of its fifty-eighth session,[2] which contains the draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities,

Noting that the Commission decided to recommend to the General Assembly that it endorse the draft principles by a resolution and urge States to take national and international action to implement them,[3]

Emphasizing the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (*a*), of the Charter of the United Nations,

Noting that the questions of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm are of major importance in the relations of States,

Taking into account views and comments expressed in the Sixth Committee on chapter V of the report of the Commission on international liability in case of loss from transboundary harm arising out of hazardous activities[2] of the report of the Commission at its fifty-eighth session,

1. *Expresses its appreciation* to the International Law Commission for its continuing contribution to the codification and progressive development of international law;

2. *Takes note* of the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, presented by the Commission, the text of which is annexed to the present resolution, and commends them to the attention of Governments;

3. *Decides* to include in the provisional agenda of its sixty-second session an item entitled "Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm".

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[1] *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* and corrigendum (A/56/10 and Corr.1), paras. 91, 94 and 97.

[2] Ibid., *Sixty-first Session, Supplement No. 10* (A/61/10).

[3] Ibid., para. 63.

Annex

Principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities

The General Assembly,

Reaffirming Principles 13 and 16 of the Rio Declaration on Environment and Development,

Recalling the draft articles on the Prevention of Transboundary Harm from Hazardous Activities,

Aware that incidents involving hazardous activities may occur despite compliance by the relevant State with its obligations concerning prevention of transboundary harm from hazardous activities,

Noting that as a result of such incidents other States and/or their nationals may suffer harm and serious loss,

Emphasizing that appropriate and effective measures should be in place to ensure that those natural and legal persons, including States, that incur harm and loss as a result of such incidents are able to obtain prompt and adequate compensation,

Concerned that prompt and effective response measures should be taken to minimize the harm and loss which may result from such incidents,

Noting that States are responsible for infringements of their obligations of prevention under international law,

Recalling the significance of existing international agreements covering specific categories of hazardous activities and stressing the importance of the conclusion of further such agreements,

Desiring to contribute to the development of international law in this field,

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Principle 1
Scope of application

The present draft principles apply to transboundary damage caused by hazardous activities not prohibited by international law.

Principle 2
Use of terms

For the purposes of the present draft principles:

(*a*) "damage" means significant damage caused to persons, property or the environment; and includes:

(i) loss of life or personal injury;

(ii) loss of, or damage to, property, including property which forms part of the cultural heritage;

(iii) loss or damage by impairment of the environment;

(iv) the costs of reasonable measures of reinstatement of the property, or environment, including natural resources;

(v) the costs of reasonable response measures;

(*b*) "environment" includes natural resources, both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors, and the characteristic aspects of the landscape;

(*c*) "hazardous activity" means an activity which involves a risk of causing significant harm;

(*d*) "State of origin" means the State in the territory or otherwise under the jurisdiction or control of which the hazardous activity is carried out;

(*e*) "transboundary damage" means damage caused to persons, property or the environment in the territory or in other places under the jurisdiction or control of a State other than the State of origin;

(*f*) "victim" means any natural or legal person or State that suffers damage;

(*g*) "operator" means any person in command or control of the activity at the time the incident causing transboundary damage occurs.

Principle 3
Purposes

The purposes of the present draft principles are:

(*a*) to ensure prompt and adequate compensation to victims of transboundary damage; and

(*b*) to preserve and protect the environment in the event of transboundary damage, especially with respect to mitigation of damage to the environment and its restoration or reinstatement.

Principle 4
Prompt and adequate compensation

1. Each State should take all necessary measures to ensure that prompt and adequate compensation is available for victims of transboundary damage caused by hazardous activities located within its territory or otherwise under its jurisdiction or control.

2. These measures should include the imposition of liability on the operator or, where appropriate, other person or entity. Such liability should not require proof of fault. Any conditions, limitations or exceptions to such liability shall be consistent with draft principle 3.

3. These measures should also include the requirement on the operator or, where appropriate, other person or entity, to establish and maintain financial security such as insurance, bonds or other financial guarantees to cover claims of compensation.

4. In appropriate cases, these measures should include the requirement for the establishment of industry-wide funds at the national level.

5. In the event that the measures under the preceding paragraphs are insufficient to provide adequate compensation, the State of origin should also ensure that additional financial resources are made available.

Principle 5
Response measures

Upon the occurrence of an incident involving a hazardous activity which results or is likely to result in transboundary damage:

(*a*) the State of origin shall promptly notify all States affected or likely to be affected of the incident and the possible effects of the transboundary damage;

(*b*) the State of origin, with the appropriate involvement of the operator, shall ensure that appropriate response measures are taken and should, for this purpose, rely upon the best available scientific data and technology;

(*c*) the State of origin, as appropriate, should also consult with and seek the cooperation of all States affected or likely to be affected to mitigate the effects of transboundary damage and if possible eliminate them;

(*d*) the States affected or likely to be affected by the transboundary damage shall take all feasible measures to mitigate and if possible to eliminate the effects of such damage;

(*e*) the States concerned should, where appropriate, seek the assistance of competent international organizations and other States on mutually acceptable terms and conditions.

Principle 6
International and domestic remedies

1. States shall provide their domestic judicial and administrative bodies with the necessary jurisdiction and competence and ensure that these bodies have prompt, adequate and effective remedies available in the event of transboundary damage caused by hazardous activities located within their territory or otherwise under their jurisdiction or control.

2. Victims of transboundary damage should have access to remedies in the State of origin that are no less prompt, adequate and effective than those available to victims that suffer damage, from the same incident, within the territory of that State.

3. Paragraphs 1 and 2 are without prejudice to the right of the victims to seek remedies other than those available in the State of origin.

4. States may provide for recourse to international claims settlement procedures that are expeditious and involve minimal expenses.

5. States should guarantee appropriate access to information relevant for the pursuance of remedies, including claims for compensation.

Principle 7
Development of specific international regimes

1. Where, in respect of particular categories of hazardous activities, specific global, regional or bilateral agreements would provide effective arrangements

concerning compensation, response measures and international and domestic remedies, all efforts should be made to conclude such specific agreements.

2. Such agreements should, as appropriate, include arrangements for industry and/or State funds to provide supplementary compensation in the event that the financial resources of the operator, including financial security measures, are insufficient to cover the damage suffered as a result of an incident. Any such funds may be designed to supplement or replace national industry-based funds.

Principle 8
Implementation

1. Each State should adopt the necessary legislative, regulatory and administrative measures to implement the present draft principles.

2. The present draft principles and the measures adopted to implement them shall be applied without any discrimination such as that based on nationality, domicile or residence.

3. States should cooperate with each other to implement the present draft principles.